IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/11/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.R.C.No.1793 of 2004
and
Crl.M.P.No.10684 of 2004

1. Periyasamy

2. Amudha

3. Kamalanathan

4. Mani

5. Venganathan @ Arumugam

6. Somasundaram ... Petitioners

-Vs-

State by Inspector of Police,
Namagiripettai Police Station,
Crime No.335 of 1999
Namakkal District. ... Respondent

This Criminal Revision Case is filed under Sections 397 and
401 Cr.P.C. against the order dated 16.7.2004 made in Crl.M.P.No.74 of 2004
in S.C.No.16 of 2003 on the file of the Additional Sessions Court/ Fast Track
Court, Namakkal.

!For Petitioners : Mr.N.Manokaran

^For Respondent : Mr.V.Jayaprakash Narayanan,
G.A.(Crl.side)

:O R D E R

The above criminal revision case has been filed praying to set aside
the order dated 16.7.2004 made in Crl.M.P.No.74 of 2004 in S.C.No.16 of 2003
on the file of the Additional Sessions Court/Fast Track Court, Namakkal.

2. Today, when the above Revision Case was taken up for consideration, on a perusal of the materials placed on record and upon hearing the learned counsel for the petitioners, it comes to be seen that originally a case was registered against the petitioners under Section 307 I.P.C. and on a later stage at the time of framing of the charges on an application filed on the part of the prosecution, three more Sections have been added i.e., Sections 323, 324 and 436 of I.P.C. and it is the subject matter of the above criminal revision case.

3. On the part of the learned counsel appearing on behalf of the petitioners in the criminal revision case, he would argue to the effect that while the major charge under Section 307 itself is there, the lower court should not have gone into adding up of Sections 323, 324, and 436 I.P.C, that too, without the ingredients being made available but on the part of the lower court as per its order, it would see that sufficient ingredients being made out for those sections to be added.

4. Section 216 of Cr.P.C. provides that:

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge in one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained unless sanction has been obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

5. From the above reading of the Section, it could be seen that the said Section gives enormous power to the trial Court to add up, delete or alter the charges and therefore, the trial Court which is one having the entire materials placed on record and having perused the same wants to alter the charge for the reasons assigned and hence, no interference by this court need be made into such of the acts committed on the part of the trial Court and even in the case in hand though on the part of the petitioners, they are able to say that the ingredients are not so well made out in the case of the prosecution so as to add up the Sections, still they are not able to explain as to how it is prejudicial to their interest or as to how it is against the dictum of law, the charges have been altered and therefore, the altering of the charges by the trial Court has to be approved. Whatever be the charges framed, unless on evidence it is proved, merely adding up of the Sections is not going to matter during trial and therefore, the petitioners need not much worry about the adding of the Sections in the framing of the charges but to

focus their attention to disprove the case of the prosecution and hence, the following order.

In result,
i) The above criminal revision case does not merit acceptance for the reasons assigned the same is dismissed.
ii) The order dated16.7.2004 made in Crl.M.P.No.74 of 2004 in S.C. No.16 of 2003 on the file of the Additional Sessions Court/Fast Track Court, Namakkal, is confirmed;
iii) Consequently, the stay petition filed in C.M.P.No.10684 of 2004 is also dismissed.

Index: Yes

Internet: Yes
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To
1. The learned Additional Sessions Court/
Fast Track Court, Namakkal.

2. The Inspector of Police,
Namagiripettai Police Station,
Namakkal District

3. The Public Prosecutor,
High Court, Chennai.